

Conference Report

Getting the Bill Right – An Update

Taking it Forward - the work of the NI Human Rights Commission, Monica McWilliams Chief Commissioner

I am very taken by this notion about the Hippocratic oath to do no harm. Would it ever turn into a ‘hypocritical’ oath to do no harm? I am also very taken, Tim, when you put up the fact that Peter Robinson put out the word to do no harm in his budget. Was he meaning the same thing as Chris McCrudden when he said to do no harm? I must go and tell both of them that the ‘do no harm principle’ is alive and well and strong in Northern Ireland. I promise you, and this is Con Hartley’s joke, that we won’t take another ten years to interpret what that particular oath means in the context of Northern Ireland.

This is our first opportunity, really, to publicly comment on the outcomes of the Forum. Many of you know, but some of you may not, that we were independent of the process but very, very supportive of it. For many years, it has been our belief and the belief of all of the Commissioners are now new Commissioners, that both political parties and civic society should sit down together and hammer out what they would like to see in a Bill of Rights.

We were observers to that process and I thank the Commissioners, some of whom are here today, for observing during that long period of time and reporting back to the Commission. But also, our Commissioners are here today and were here yesterday to hear back in the detail that you provided us with. And thank you to the Consortium for doing that. We have listened very carefully over the last two days to both the process and to the outcome.

There is an incredible amount of work going on throughout the communities and has been for a number of years. But just to give you an idea of the last week alone in terms of the number of things I have been at where the human rights issues and the Bill of Rights in particular and the European Convention on Human Rights have been the focus.

I think it started last week with the Transitional Justice Institute from the University bringing together good people from around the world to put their heads together on these issues. One of the things that came out of that for me was one of the eminent lawyers saying that it would be a very lazy approach to just incorporate everything that was in the international standards. And that you need to think about your circumstances of Northern Ireland and what should be incorporated. Then the Institute of Governance and the WRDA ran a conference for the women's sector again on the Bill of Rights.

You heard today about the conference from CAJ, the Committee on the Administration of Justice, that focused on the issue of identity at which both Chris McCrudden and Tom Hadden addressed the issues that Tim put up. Actually, what strikes me is that some of that is so particular to Northern Ireland that it particularly may best be left out of what should be particular to Northern Ireland. And I thank Patricia for her honesty today in terms of also being a participant at that. And we benefited greatly from that discussion too.

Then there was a World Conference last Saturday in Dublin which moved up to Belfast on Monday. Only the Barristers and the lawyers of the world would call themselves the World Conference of Barristers and Advocates. But it was great that the focus was on human rights. The Saturday was on counterterrorism, an incredibly important discussion globally but also locally and what was going on in the context of the UK and them backing away indeed from the protections that are in the Human Rights Act. And, it moved to Belfast where we looked at the past.

Barry McDonald made a very interesting point when he was addressing the conference. He said that he remembers lawyers standing in front of Judges when the European Convention on Human Rights was not incorporated into law and that they would argue Convention points on the court floor. And the Judge would say, "Remind me, is the European Convention on Human Rights incorporated into law?" And the Barristers would have to say "No Your Honour." And Your Honour would say, "And your point is?"

So the point was that the more it is incorporated, the more it is taken seriously by the judiciary, despite the fact that governments ratify and have obligations to the Conventions that they ratify, whether or not they pay attention to these when serious issues are being addressed, as indeed they were here in Northern Ireland over the 30 years of our conflict.

After that World Conference, we have had this conference, which has also been global and local. And I very much thank the Convenors and the Legal Advisors for their honesty and their sense of reality, for pointing out the difficulties that we face and what should be mainstreamed and what should be dedicated, what should be incorporated and how to pay attention to international standards, the differences between interpretive principles, directive principles and judicability and the issues around social and economic rights that we have faced for many years in terms of the discussions that have been ongoing.

All of these are incredibly important. What the Commission is now doing, is considering the Forum's report in detail and as a consequence, this conference has been very timely because it has helped us to do that analysis. We have had a legal analysis interpreting our mandate and it was something the Forum had to pay quite a lot of attention to. We have had to look at particular circumstances of Northern Ireland; the legal aspects of what might be supplementary or additional; what has not been protected as well as those international obligations and the whole issues of parity of esteem.

So, we are undertaking that legal analysis of the Forum's report in order to better inform ourselves in terms of these particular issues. We have prepared a set of guidelines and that is all they are - a set of questions, because it was very useful to hear the extent to which that discussion took up a great deal of time in the Forum. We ourselves have wanted to be able to move into a stage now of addressing some of the questions that we picked up that came up at the Forum and to focus ourselves on the mandate and therefore that is what they are. It is been extremely useful as a result of bringing those questions around to civic society sectors and into the political parties that we have had very useful feedback.

Those meetings are going on and they will continue over the summer. But we have done most of them so far and have been very open and transparent with the sectors and with others in terms of our own decision making process. I thought the political debate yesterday morning was useful. Well, first we

would not have had it ten years ago because they would not have sat together ten years ago. So ten years on we are in a different place and space, which is great. It was interesting to hear one of the parties which was not a party to the Agreement saying that the Forum was useful— the DUP, who used the words that it was time for ‘accommodation.’

All of the parties are signed up to a Bill of Rights and we should not and could not emphasise that enough. It is a really important step forward. Now, of course we know that the question remains about what is in it, but the fact that everybody is up for it is extremely important. Having said that, the First Minister, Peter Robinson, did address the world conference on Barristers and Advocates in the Waterfront on Monday. I was Chairing a later session but was there to hear him actually say that he was not for an extensive Bill of Rights and it came back to that issue that Bruce and Aoife were talking about, that they sit in the Executive worried every single day about the extent of litigation in Northern Ireland and they look over their shoulders at who is going to take the next for a Judicial Review. Having said that, Peter Robinson then cracked a joke saying that he probably has paid more lawyers in Northern Ireland than anybody else, given how much that he himself has contested different parts of the Agreement from time to time. So it just shows you that when you come to be in a position of responsibility, how you look at the issue of litigation as to when you were actually trying to use litigation to protect your own interests.

Even having the First Minister now debating in front of the world lawyers, barristers and advocates the whole notion of a Bill of Rights for Northern Ireland, is an enormous step forward. And we wait to see what happens when the Assembly gets the opportunity to debate the advice that we offer.

We have also met the Minister of Justice, Michael Wills, in London. The Commissioners went over to London a couple of months ago and we did meetings with every single political party at Westminster in the House of Lords and Commons. And we are very interested in what the Conservative Party’s response might be to the Labour Government’s paper on a UK Bill of Rights and Responsibilities. We are told that it will be released at the end of July. We have emphasised to them that they need to pay attention to the separate process in Northern Ireland.

We are heartened to hear that every political party at Westminster believes that there has been separate Constitutional settlement in Northern Ireland and that as part of that, there should be a Bill of Rights. And so we are keen to see

how this discussion pans out at the end of July. It was supposed to have been April, then May, then June. Now we hear it is July. But we have obviously asked to include a reference more than what was in the previous paper on the Governance of Britain on the Bill of Rights for Northern Ireland.

Mohammad said that the process had been going on for ten years and that we should not rush it. I have always said it is better to get it right than to rush it, but I think the people, after ten years, would like to see what that advice looks like. And we have a window. We know that the elections are coming up in 18 months time. We know that Gordon Brown may be in some difficulty. We know that there is a possibility that the Conservative Government may be in place by the time that this advice makes its way through the legislative process.

We have asked the NIO to secure a legislative slot for us. We have bid for that. Their response is that you can never guarantee legislation until the Government gives its consideration to the advice that it is offered. That is standard with all advice that comes forward on the potential for legislation. And that is as much as we will get. Having said that, we have emphasised to them the importance of not missing a legislative slot within the next 18 months. So these are interesting times.

They have agreed that after we offer our advice, and clearly that advice will go to the people of Northern Ireland, that we all get our sleeves rolled up in that window. That when it moves to legislation, then they will provide another 12 weeks in which they will take evidence in which they have promised, and I hope they live up to this promise, that the Forum's participants will have the opportunity also to engage with the Secretary of State, as indeed will the political parties. So these are interesting times in Northern Ireland, where the participants for civic society alongside the political representatives will be asked and continue to be asked for their views on this process.

I think you all probably know by now that we will not be drafting a detailed clause-by-clause Bill. We are not legislators. Having been in that forum before, I know the difference between putting forward advice and drafting the Bill. Our own advice will take the form of the context, setting out the context on why a Bill of Rights for Northern Ireland. There will be a substantive chapter outlining the rationale for each principle. And we also intend to put the provisions in there in terms of carrying that forward.

An issue that came up from time to time in the last two days was also a chapter on how to imbed a culture of rights in Northern Ireland. Again, I think it was Bruce and probably others who said it that is not just about standing in front of courts litigating. It is also embedding this culture in terms of protections and promotion of rights and the fulfilment of rights here in Northern Ireland, where we know that they were so abused, restricted and neglected in the past. I was also very taken by the very detailed discussion because in all of this process, of course the politicians, the lawyers and the people, have had to work together in partnership and sometimes it gets very technical. But it was very important that we heard the importance of paying attention to those issues about the preamble, the enforcement and the implementation.

And I'll just finish with that word - preamble. Whatever I have heard over the last two days, it sure looks like it is going have a hell of a big preamble.